

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
GREATER LYNCHBURG TRANSIT COMPANY
August 1, 2003**

Objectives /Policy Statement (§§26.1, 26.23)

The Greater Lynchburg Transit Company (GLTC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. GLTC has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, GLTC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of GLTC to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

GLTC's Assistant General Manager has been delegated as the DBE Liaison Officer. In that capacity, the Assistant General Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by GLTC in its financial assistance agreements with the Department of Transportation.

GLTC has disseminated this policy statement to the Greater Lynchburg Transit Company's Board of Directors and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through minority and disadvantaged community and business organizations, publication of notice in local minority and industry publications.

General Manager

Date

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR §26.5.

Appendix contains 49 CFR Part 26.

Nondiscrimination. (§26.7)

GLTC will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, GLTC will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (§26.21)

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (§26.43)

We do not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO) (§26.45)

We have designated the following individual as our DBE Liaison Officer: Jon Rodocker, GLTC Assistant General Manager, PO Box 797, Lynchburg, VA 24505, 434-847-5311 ext 201 jrodocker@gltc.ci.lyncburg.va.us. In that capacity, the Assistant General Manager is responsible for implementing all aspects of the DBE program and ensuring that GLTC complies with all provisions of 49 CFR Part 26. The Assistant General Manager has direct, independent access to the General Manager concerning DBE program matters. An organization chart displaying the Assistant General Manager's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both ace-neutral methods and contract specific goals) and monitors results.
6. Analyzes GLTC's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the General Manager/governing body on DBE matters and achievement.

9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Virginia.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains GLTC's updated directory on certified DBEs

Federal Financial Assistance Agreement Assurance (§26.13)

GLTC has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

GLTC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to GLTC of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DBE Financial Institutions

It is the policy of GLTC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Directory (§26.25)

GLTC maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, telephone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory annually. We make the Directory available at GLTC's administrative facility located at 1301 Kemper Street, Lynchburg, VA.

Over concentration (§26.33)

GLTC has not identified any over concentration of any types of work.

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Prompt Payment

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 20 days from the receipt of each payment the prime contractor receives from GLTC. The prime contractor agrees further to return retainage payments to each subcontractor within 20 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of GLTC. This clause applies to both DBE and non-DBE subcontractors.

Monitoring and Enforcement Mechanisms (§26.37)

GLTC shall require every prime contractor to provide to GLTC by the 15th day of the month for work performed in the previous month, a report showing prior payments, current payments broken down by prime contractor and sub contractors.

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Overall Goals (§26.45)

Amount of goal

GLTC's overall goal for FY 2003 is the following: 9% of the Federal financial assistance we will expend in DOT-assisted contracts (exclusive of FTA funds to be used for the purchase of transit vehicles).

Method

The following is a summary of the method we used to calculate this goal:

Step 1 calculated the base figure by dividing the number of minority-owned firms (119) with paid employees in the Lynchburg MSA (Census Bureau CBP database) by the total number of available firms (1162) in the Lynchburg MSA in SIC codes 15, 40, 50, 52, 60, 70 and 99, (Census Bureau's CBP database).

$$119/1162 = .10 = 10\%$$

Step 2 reduces the base figure allowing for past performance and previous goals, for the most recent fiscal years, which averages 1%

$$\text{Base \% (10\%)} - \text{Actual Performance (1\%)} = 9\%.$$

Given the amount of DOT-assisted contracts, GLTC expects to let during the fiscal year, which is \$274,884, this means we have set a goal of expending \$24,739 with DBEs during this fiscal year.

Appendix F shows the calculation of the goals.

Transit Vehicle Manufacturers (\$26.49)

GLTC will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of section 49 CFR Part 26.49. Alternatively, GLTC may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Process

GLTC submits its overall goal to DOT on August 1 of each year.

Before establishing the overall goal each year, GLTC will consult with, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and GLTC's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice in the local newspaper, minority newspaper and industry publication of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that GLTC, and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

GLTC will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. GLTC uses the following race-neutral means to increase DBE participation:

1. The Company will consider breaking down contracts into smaller parts, where economically feasible, prorating payments and delivery schedules.
2. The Company will use the least complicated bid forms appropriate to each procurement solicitation, and will consider adjusting time, whenever feasible, in order to minimize bidding constraints.
3. The company will work closely with financial institutions, insurance and bonding companies and prime contractors in an effort to alleviate financial barriers to participation. The company will consider waiving, or reducing bonding and insurance where legally possible.
4. The Company will provide information on business opportunities for DBEs through the use of local newspaper and other media and by periodically informing the DBEs of such opportunity.
5. The company will encourage the formation of joint ventures among DBEs and between disadvantaged and non-disadvantaged firms, which will provide the opportunity for DBEs to gain experience.
6. The Company will offer information on its organization and contractual needs.
7. The Company will provide DBEs with the opportunity to review and evaluate similar successful bid documents.
8. The Company will make available its DBE directory through print and electronic means to the widest feasible universe of prime contractors.
9. The Company will hold pre-bid conferences on all major contracts to provide firms with the opportunity to have questions answered and to provide the Company an opportunity to explain DBE requirements.

We estimate that, in meeting our overall goal of 9%, we will obtain 100% from race-neutral participation and 0% through race-conscious measures.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see §26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (§26.51)

GLTC will use contract goals to meet any portion of the overall goal GLTC does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Good Faith Efforts (§26.53)

Information to be submitted

GLTC treats bidder/offers' compliance with good faith efforts requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

The obligation of the bidder/offers is to make good faith efforts. The bidder/offers can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

The following personnel are responsible for determining whether a bidder/offers who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible: GLTC Assistant General Manager.

We will ensure that all information is complete and accurate and adequately documents the bidder/offers' good faith efforts before we commit to the performance of the contract by the bidder/offers.

Administrative reconsideration

Within five (5) days of being informed by GLTC that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offers may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: Michael J. Carroll, General Manager, PO Box 797, Lynchburg, VA 24505, 434-847-5311 ext 204, mjcarroll@gltc.ci.lyncburg.va.us The reconsideration official will not have played any role in the original determination that the bidder/offers did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offers will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offers will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offers a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation (§26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

Certification (§§26.61 – 26.91)

GLTC will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions decision based on the facts as a whole.

Process

Our certification application form and documentation requirements are found in Attachment B to this program.

For information about the certification process or to apply for certification, firms should contact: Jon Rodocker, GLTC Assistant General Manager, PO Box 797, Lynchburg, VA 24505, 434-847-5311 ext 201, jrodocker@gltc.ci.lyncburg.va.us.

In the event we propose to remove a DBE's certification, we will follow procedures consistent with §26.87. Attachment C to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that the GLTC General Manager will serve as the decision maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the General Manager will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

If we deny a firm's application or decertify it, it may not reapply until 12 months have passed from our action.

Unified Certification Program

GLTC recognizes that the State of Virginia has designated the Virginia Department of Transportation, as the recipient of certifications. GLTC has submitted written documentation to VDOT to have it act as the certifying agency. This will allow GLTC and other FTA recipients to rely on one stop shopping for DBE certification.

Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

“Recertifications”

We will review the eligibility of DBEs that we certified under former part 23, to make sure that they meet the standards of Subpart D of part 26. We will complete this review no later than three years from the most recent certification date of each firm.

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility every five years. The components of the reviews will be determined on a case-by-case basis.

“No Change” Affidavits and Notices of Change

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with the DBE’s application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to GLTC under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms of these obligations by mail. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if

a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

We will require all disadvantaged owners of applicants and of currently-certified DBEs whose eligibility under part 26 we review, to submit a statement of personal net worth.

Attachment D sets forth our personal net worth form and the documentation respondents must submit with it.

Information Collection and Reporting

Bidders List

GLTC will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

A notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to GLTC.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of GLTC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

We may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to DOT

We will report DBE participation to DOT as follows:

We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal

financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Attachments

- A.** GLTC Organization Chart
- B.** Certification Application Form and Documentation Requirements
- C.** Decertification Procedures
- D.** Personal Net Worth Form
- E.** 49 CFR Part 26 (By Reference)
- F.** Calculation of DBE Goals